


Slide 1

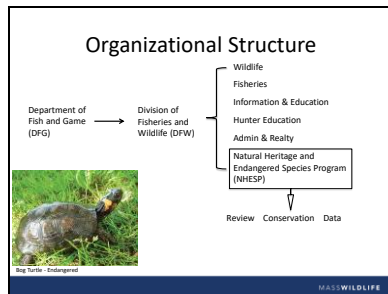


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Navigating the Massachusetts Endangered Species Act - An Overview

Rebekah Zimmerer
Mass Division of Fisheries and Wildlife, NHESP

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Division of Marine Fisheries, DER, Office of Boating and Fishing -> all under DFG

Spend time talking about the kinds of things we do – other agencies we coordinate with – DEP, NRCS, USFWS, DCR, DOT

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Natural Heritage and Endangered Species Program

- Established in 1978
- Part of the Massachusetts Division of Fisheries and Wildlife since 1983
- Focus on rare species and supporting habitats
- 432 plant and animal species
 - More on watch list
- 3 Categories:
 - Endangered
 - Threatened
 - Special Concern

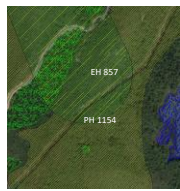


Eastern Box Turtle, Special Concern

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Priority Habitat vs. Estimated Habitat

Estimated Habitat (EH) <ul style="list-style-type: none">Geographical extent of habitat for state-listed wetland wildlifeA sub-set of Priority HabitatNo plantsCodified under WPA		Priority Habitat (PH) <ul style="list-style-type: none">Geographic extent of habitat for all state-listed speciesBoth plants and animalsCodified under MESA
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Estimated Habitat is always located within Priority Habitat, BUT Priority Habitat does NOT always include Estimated Habitat

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Example: Blue Spot Salamander: EH and PH


Orange Sallow Moth: only PH
Many people are confused regarding the difference between Priority and Estimated Habitat, so we wanted to take a moment to clarify the difference.

Important: Estimated Habitat is always located within Priority Habitat, BUT Priority Habitat does NOT always include Estimated Habitat.

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Mapping Changes

- Atlas updated every 4 years
- Next Atlas – anticipated 2021
- Changes based on:
 - New MESA or ESA listings
 - New accepted observations
 - Drop observations 25 yrs. or older
 - Newest research
 - Conservation priorities
 - Population persistence
 - Updated aerial maps
 - Public comments



Spotted Turtle – Deland


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Mapping reconsideration, public comments when we update the Atlas, MESA list changes

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Have you found a rare species?

- Use the Vernal Pool and Rare Species (VPRS) Information System
- Upload details:
 - Location
 - Photos
 - Number of individuals
 - Habitat
 - Observer credentials
- Can be used by anyone
- Often a requirement of plant and animal surveys, also protection plans



Wilson's Goshawk Bumble Bee, Thorsland

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How do I know if I'm in MESA jurisdiction (EH, PH)?

Check mapping

1. Oliver
2. Download shapefiles to GIS or CAD

Consult with NHESP

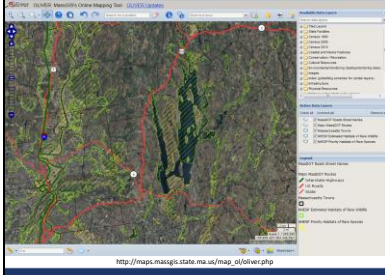
1. Data release (for conservation purposes)
2. Rare Species List
3. Information request (for landowner)
4. Pre-file consultation



Ringed Bighornbill - Threatened

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http://maps.massgis.state.ma.us/map_ol/olwv.php

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Pre-File Consultation

- Review process ahead of formal filing
- Send e-mail with basic project information & plan
- Avoids surprises and timing issues
- Explore additional benefits to species
- Applicable for:
 - General reviews
 - Habitat management
 - Forestry/forest management plan
 - Property-wide or multi-parcel plans




Peregrine Falcon, Special Concern

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Regulatory Review

- Massachusetts Endangered Species Act (MESA) (321 CMR 10.00)
 - Projects or activities within Priority Habitat
 - Option 1: No Take
 - Option 2: Take avoided through conditions
 - Option 3: Take
 - Option 4: Exempt
- What does “Take” mean?



Common Tern - Special Concern

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We consult with other agencies to understand projects and make informed determinations

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If a Take, then what?

1. Meet performance standards:
 - a. Avoid, minimize, & mitigate impacts on-site
 - b. Consider direct impacts as well as impacts to habitat, habitat connectivity, life cycle stages
2. Assess project:
 - a. Consider alternatives, demonstrate no feasible alternatives exist
 - b. Show that project will impact insignificant proportion of local population
 - c. Provide a long-term, net benefit to the species through a CMP (conservation and management permit)

*For a Take greater than 2 acres, a MEPA filing is required

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Regulatory Review

- Wetland Protection Act (WPA) (310 CMR 10.59, 10.37, 10.58(4)(b))
 - Review RDAs, NOIs, Limited Project, CH91/401 for projects in Estimated Habitat
 - Option 1: No Adverse
 - Option 2: Adverse effect avoided through conditions
 - Option 3: Adverse effect
- Assess short or long-term adverse impacts to actual Resource Area habitat

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We consult with other agencies to understand projects and make informed determinations

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Tips for Moving Through the Process

- Response timelines:
 - MESA: 30 days under 310 CMR 10.59
 - WPA: 21 days to first public hearing
 - RDA: courtesy review, response in 2 weeks
 - Pre-file Consultation: response in 2 weeks

Note the difference in timeline
- What if there's an Adverse finding?
- Send Division changes & updates to plans
- Wait for Division determination letter before closing project/issuing OOC




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Mention difference in timing requirements; If Adverse finding, can't issue OOC until Conservation and Management Permit is complete; Closing the hearing b/f Division issues causes problems – if Division requires changes to project, have to re-notify all abutters, re-open project; An issue also if MESA Determination Letter and plans have to be recorded as a condition of approval – change plans, have to re-record – causes confusion in the registry

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How to File

- All non-exempt activities in Priority Habitat
- Is the project only in Priority Habitat (PH)? use MESA Checklist
- Is the project in Priority Habitat and Estimated Habitat (PH & EH)? use the Streamlined NOI
- MESA section on pages 5-6
- Be sure document has landowner signature




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Common Outcomes

- Review Complete:
 - Turtle protection plan
 - Time of year restriction (ex: American Bittern)
 - Compliance report
 - Recordation
- Review Incomplete:
 - Botanical surveys
 - Additional information (ex: alternatives analysis)




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Exemptions

- Defined differently under WPA and MESA
 - Limited
 - Grandfathered
 - Exempt
- Example: Agriculture



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Different focus for WPA and MESA - Ag example: focus on resource areas: BVW, emergent wetlands, distances off of wetlands etc. MESA focuses on whatever rare species is in the area; WPA 200' off of river, 100' off of wetland features; MESA concern with irrigation pump sucking up fish, rare plants in the ag tree lines,

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MESA Exemptions




- Certain maintenance, repair, or addition activities related to infrastructure, buildings, and homes
- Wetland delineation and other preparatory activities
- Normal maintenance and improvement of land in agricultural or aquacultural use
- Certain activities adjacent to land in agricultural or aquacultural use
- Forestry requiring a Forest Cutting Plan
- Forestry for personal use
- Active management for state-listed species

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MESA Considerations for Habitat Management

- What's the interaction between project and rare species?
- Project goal doesn't need to focus on rare species (in all cases)
 - Example:
 - Install boardwalks through wetland
- Species present influence concerns
 - Examples:
 - Upland invasive control near pondweeds (Peltandra sp.)
 - Eastern Box Turtle vs. Climbing Fern during Forest Cutting Plan
- Consider trade-offs between species
 - Example:
 - Prescribed fire to maintain or enhance quality pitch-pine scrub-oak habitats



Wetland - Special Concern



Blue-spotted Salamander - Special Concern

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Impacts to Eastern Box Turtle during burn, Impacts to rare upland moths during burn. Different life histories influence concern of harm during burn to both species (r selection moths vs k selection turtles); burn benefits suite of species including rare plants, birds,

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Habitat Management Review Outcomes


Option 1: Exempt, no conditions
Option 2: Exempt with conditions
Option 3: Portions exempt and portions file MESA
Option 4: File MESA
Option 5: Insufficient information

Example of Exempt:


- Herbicide phragmites
- Mapped for rare moth species

Example of Exempt with conditions:

- re-route existing trails to avoid continued erosion to edge of vernal pools
- Mapped for Jefferson Salamander
- Avoid work in area from early March to mid-May



Early Henslow's Sparrow - Threatened



Jefferson Salamander - Special Concern

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Option 1 and Option 2 most common

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MESA turns 30 in 2020!




- Visit Mass.gov/30MESA for news and events celebrating MESA's 30th anniversary
- Connect with MassWildlife on Facebook, Instagram

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Questions?

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Purple Tiger Beetle - Special Concern

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